

VZCZCXRO6051
PP RUEHNZ
DE RUEHWL #0444/01 1660614
ZNR UUUUU ZZH
P 150614Z JUN 07
FM AMEMBASSY WELLINGTON
TO RUEHC/SECSTATE WASHDC PRIORITY 4359
INFO RUEHBY/AMEMBASSY CANBERRA PRIORITY 4864
RUEHNZ/AMCONSUL AUCKLAND PRIORITY 1346
RUCPDO/USDOC WASHDC PRIORITY 0143
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY

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EAP/ANP, EB/IFD/OIA, L/CID, PASS TO USTR

E.O. 12958: N/A

TAGS: [CASC](#) [EINV](#) [KIDE](#) [PGOV](#) [OPIC](#) [NZ](#)

SUBJECT: 2007 REPORT ON INVESTMENT DISPUTES - NEW ZEALAND
SUBMISSION

REF: SECSTATE 55422

1. SUMMARY: Pursuant to reftel, Post has reviewed all cases in the past year involving investment disputes and found that there were no/no cases of expropriations (or other takings) without compensation on the part of the New Zealand government. In regards to disputes between a U.S. person/corporation and the local government affecting investment property disputes, Post reviewed the 98 cases filed with New Zealand's Overseas's Investment Office (OIO) between June 2006 and May 2007 and found only 2 cases in which a U.S. person may have been adversely affected. Both cases involved the purchase of land considered to be "environmentally sensitive" or property having a "cultural significance" because it bordered protected or indigenous territory. Overall New Zealand remains an open economy with a strong respect for investments and private property rights as reflected in international surveys. End Summary

BACKGROUND ON NEW ZEALAND'S INVESTMENT CLIMATE

2. (U) According to the Heritage Foundation's 2007 Index of Economic Freedom, New Zealand's overall economy is ranked at number 5 among the top 10 "economically free" countries. New Zealand's overall score is 81.6, just below the U.S., which scored 82, and compared to a world average of 60.6. New Zealand's overall Investment Freedom score was 70, demonstrating that New Zealand encourages foreign investment and barriers to investment are minimal. There are a few areas in which foreign ownership is restricted: Telecom New Zealand (the national telecommunication company), Air New Zealand (the national air carrier), and fishing rights (complex treaty arrangements with indigenous peoples preclude open market exchange).

3. (U) Despite New Zealand encouraging foreign investment generally without discrimination, the government does screen certain types of foreign investment through an agency called the Overseas Investment Office (OIO). Amid growing public concern about purchases of coastal properties by foreigners, the New Zealand government enacted legislation in August 2005 that increased screening and monitoring of land purchases, but raised the minimum threshold for scrutiny of proposed business purchases. Under the legislation, the threshold for screening non-land business assets has increased from US\$37.5 million to US\$75 million, where a foreigner proposes to take ownership or control of 25 percent or more of a business. Government approval is required for purchases of land larger than 5 hectares (12.35 acres) and of land in certain sensitive or protected areas. Any application involving land in any form must meet a national interest test. For land purchases, foreigners who do not intend to

live in New Zealand must provide a management proposal covering any historic, heritage, conservation or public access matters and any economic development planned. The proposal must be approved and generally made a condition of consent. In addition, approved investors are required to report regularly on their compliance with the terms of the consent. Overseas persons also must demonstrate the necessary experience to manage the investment. Full remittance of profits and capital is permitted through normal banking channels. (Note: The OIO, part of Land Information New Zealand (LINZ), took over the functions of the former Overseas Investment Commission (OIC) in August 2005. End note)

ONLY TWO U.S.INVESTORS DENIED BY OIO IN PAST YEAR

14. (U) In the past year (June '06 to May '07) OIO reviewed 98 foreign investment applicants, three of which involved U.S. persons or corporations as potential investor/buyers. Of these only 2 application were denied. Both denials involved purchase of land (as opposed to business enterprises) intended for commercial purposes. Since its inception, the OIO estimates that the value of investments approved by the agency rose from US\$10.5 billion in 2005 to US\$15 billion in 2006 (figures for 2007 are not yet available). The amount of land approved for sale by OIO grew from 16,000 hectares in 2005 to 101,000 hectares in 2006. It is estimated that about 7 percent of New Zealand land is now foreign-owned. Furthermore of all applications filed this past year with OIO by international investors the largest single approval was for the sale of New Zealand Bluebird, a snack business, to U.S. firm PepsiCo for US\$185 million.

15. (U) Claimant 1 proposed to purchase 13.9 hectares of

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freehold at 300 Whaanga Rd, Raglan in the Waikato Region valued at US\$613,200 from a New Zealand person. The land in question contained an area established in plantation pines and an area of native bush subject to one of New Zealand's conservation covenants. The proposed use for the land involved the establishment of a Health Spa and Conference Center facility, including 12 two-bed units, a restaurant, full-service spa, and a manager's house. The facility was to be designed to blend into the environment. On January 24, 2007, OIO declined consent. The OIO stated that it was not satisfied that the proposal will or is likely to result in substantial and identifiable benefit to New Zealand, or ... New Zealanders.⁸ There has to date been no additional legal action taken by U.S. claimant to dispute the OIO decision.

16. (U) Claimant 2 proposed to purchase 8.4 hectares of freehold at the corner of State Highway No 6 and McMilliam Road Garston in the Otago Region values at US\$474,189.51 from a U.S. person. The land is situated near the Matuara River known for the quality of its fishing activity. The property currently holds the Upper Mataura Angler,s Lodge, which the claimant proposed to further develop using expertise and contacts in both fishing and accommodation. A decision by OIO was rendered on March 6, 2007, which declined consent. In justifying their decision the OIO stated that it was not satisfied that the proposal will or is likely to result in substantial and identifiable to New Zealand, or ... New Zealanders.⁸ There has to date been no additional legal action taken by U.S. claimant to dispute the decision of the OIO.

(NOTE: Per reftel instruction the actual names of claimants provided separately: Claimant 1 (Andrew Johnson Smith, AmCit); Claimant 2 (Bernero Holdings Limited, AmCorp).
ENDNOTE)

17. COMMENT: While there have been occasional rumblings regarding foreign ownership of Kiwi lands and enterprises by some of the fringe political groups, notably the Greens, there is no threatening ground swell forming among the local

population or government to block foreign investments. Sentiments sometime peak when pristine landscape is under consideration for commercial development especially in what is perceived as environmentally sensitive tracts of land. But the OIO's track record indicates that the majority of applications to purchase by U.S. citizens and corporations are approved. End Comment.

MCCORMICK